

**CALIFORNIA CODE OF REGULATIONS, TITLE 10, CHAPTER 5, SUBCHAPTER 3
ADOPT TO READ:**

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VIATICAL SETTLEMENT REGULATION**

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**CALIFORNIA CODE OF REGULATIONS, TITLE 10, CHAPTER ~~65~~, SUBCHAPTER
~~443~~**

ADOPT TO READ:¹

VIATICAL SETTLEMENT REGULATION

Section 2548.1 Authority and Purpose

These regulations are promulgated pursuant to the authority granted to the Insurance Commissioner by Sections 10113.1 and 10113.2 of the Insurance Code. The purpose of these regulations is to implement and clarify Sections 10113.1 and 10113.2.

NOTE: ~~Authority and Reference cited: Sections 790.10 and 10113.2(f), Insurance Code.~~
Authority cited: Sections 790.10, 10113.1 and 10113.2, Insurance Code; Reference cited: Sections 10113.1 and 10113.2, Insurance Code.

Section 2548.2 Definitions

~~As used in these regulations:~~

~~(a) "Catastrophic or life-threatening illness or condition" is:~~

¹ Deletions noticed on 8/18/06 from the Proposed Regulations originally noticed by the Commissioner are denominated in strikethrough; additions are underlined. New language added in the 10/12/06 Second Amended version of the regulations is denominated in double-underlining; new deletions, in double strikethrough.

- i. ~~An illness or condition that will result in a drastically limited life span not exceeding 24 months;~~
- ii. ~~A medical condition that has required or requires extraordinary medical intervention, such as a major organ transplant or continuous artificial life support, without which the insured person would die;~~
- iii. ~~Any condition that usually requires continuous confinement in a nursing home, convalescent center or other care facility, if the insured person is expected to remain there for the rest of the insured person's life; or~~
- iv. ~~A medical condition that in the absence of extensive or extraordinary medical treatment will result in a drastically limited life span. Such medical conditions include but are not limited to the following:~~
 - ~~(A) Coronary artery disease resulting in an acute infarction or requiring surgery;~~
 - ~~(B) Permanent neurological deficit resulting in acute form cerebral vascular accident;~~
 - ~~(C) End-stage renal failure; or~~
 - ~~(D) Acquired Immune Deficiency Syndrome.~~

As used in these regulations:

- (a) "Catastrophic or life-threatening illness or condition" is an illness or condition that will result in a drastically limited life span not exceeding 24 months. Any of the following are presumed to constitute a catastrophic or life-threatening illness or condition unless a licensed physician or independent medical underwriter states that the insured has a life expectancy exceeding 24 months:
 - (i) A medical condition that has required or requires extraordinary medical intervention, such as a major organ transplant or continuous artificial life support, without which the insured person would die;
 - (ii) A medical condition that requires continuous daily nursing care or confinement in a nursing home, convalescent center or other care facility, if the insured person is expected to remain there for the rest of the insured person's life; or
 - (iii) A medical condition that in the absence of extensive or extraordinary medical treatment will result in a drastically limited life span. Such medical conditions include but are not limited to:
 - (A) Coronary artery disease resulting in an acute infarction or requiring surgery;
 - (B) Permanent neurological deficit resulting in acute form cerebral vascular accident;
 - (C) End-stage renal failure; or

(D) Acquired Immune Deficiency Syndrome.

(b) "Entering into" includes, but is not limited to, acquiring an ownership interest in a life insurance policy which is the subject of a viatical settlement, including a collateral interest, through an assignment, purchase, devise, bequest or other transfer, except as provided for in section 2548.2(h) (i) (1) and (2).

(c) "Person" includes any natural person or legal entity including, but not limited to, individuals, partnerships, associations, trusts, or corporations, including a resident or nonresident life and disability agent licensed by the ~~e~~Commissioner.

(d) "Soliciting" includes, but is not limited to, offering or advertising viatical settlements or viatical settlement investments to any person in this state, through any newspaper or other publication, television, radio, the internet, or any other advertising device, or in person.

(e) "Viatical settlement" and "viatical settlement agreement" means an agreement entered into between a viatical settlement provider and a viator, as such words are defined in sections 2548.2(i) and (j) herein. ~~person who owns a life insurance policy or who is covered under a group policy insuring the life of a person who has a catastrophic or life threatening illness or condition, under the terms of which the viatical settlement provider pays compensation or anything of value, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the policyholder's or certificate holder's assignment, transfer, sale, devise or bequest of the death benefit or ownership of the insurance policy or certificate to the viatical settlement provider.~~ A viatical settlement includes any sale of a life insurance policy subsequent to the sale from the viator.

(f) "Viatical settlement broker" means any person domiciled, residing or conducting business in California, who, for a fee, commission, or other valuable consideration, solicits or offers the availability of viatical settlements, introduces viators to viatical settlement providers, or offers or attempts to negotiate viatical settlements between a viator and one or more viatical settlement providers. Regardless of how or by whom a viatical settlement broker is compensated, Aa viatical settlement broker is deemed to represent only the viator and not the insurer or the viatical settlement provider and owes a fiduciary duty to the viator to act according to the viator's instructions and in the best interests of the viator. A viatical settlement broker must obtain a viatical settlement license from the Commissioner. A person acting as a viatical settlement broker must obtain a license from the Commissioner. The requirements of this rule are in addition to any other requirements provided by the Corporate Securities Law of 1968. Viatical settlement broker does not include:

- (1) an attorney, an accountant, or financial planner, retained to represent the viator whose compensation is paid solely by the viator and without regard to

whether a viatical settlement is effected; or

- (2) ~~an employee of a licensed viatical settlement broker, so long as they are considered an employee for federal and state tax purposes.~~ A person who is employed by a licensed viatical settlement broker, so long as he or she is considered an employee for federal and state tax purposes.

~~(g)~~ “Viatical settlement investment” is ~~an~~ any legal or beneficial interest in a viatical settlement offered to a purchaser other than to a licensed viatical settlement provider. This definition is in addition to any definition or requirement imposed by the Corporate Securities Law of 1968.

~~(g)~~ (h) “Viatical settlement investment broker” means any person domiciled, residing or conducting business in California, who, for a fee, commission, or other valuable consideration, solicits or offers the availability of one or more viatical settlement investments to any person, introduces any person to a viatical settlement provider for the purposes of purchasing one or more viatical settlement investments, or offers to negotiate one or more viatical settlement investments between any person and a viatical settlement provider. ~~A viatical settlement investment broker must be licensed by the Commissioner.~~ A person must obtain a license from the Commissioner to act as a viatical settlement investment broker. The requirements of this rule are in addition to any other requirements provided by the Corporate Securities Law of 1968. A viatical settlement investment broker does not include an attorney, an accountant, or financial planner, retained to represent the investor, whose compensation is paid solely by the investor and without regard to whether a viatical settlement investment is effected.

~~(h)~~ (i) “Viatical settlement provider” means any person domiciled, residing or conducting business in California who enters into a viatical settlement agreement ~~with a viator.~~ A viatical settlement provider includes any person who has an ownership interest in the insurance policy which has been viaticated, which is the subject of a viatical settlement, including but not limited to a collateral ownership interest, and including subsequent owners of the life insurance policy to be viaticated which is the subject of a viatical settlement. A viatical settlement provider must obtain a viatical settlement license from the Commissioner. The requirements of this rule are in addition to any other requirements provided by the Corporate Securities Law of 1968. Viatical settlement provider does not include:

- (1) a bank, savings and loan association, credit union or other licensed lending institution that takes an assignment of a life insurance policy solely as collateral for a loan; and not as part of any transaction or agreement defined herein as a viatical settlement;
- (2) the issuer of a life insurance policy providing accelerated benefits under California law and pursuant to the insurance policy; or
- (3) an employee of a licensed viatical settlement provider, so long as ~~they are~~ he

or she is considered an employee for federal and state tax purposes.

~~(i)~~ (j) “Viator” means the original owner of a life insurance policy, a person who is a resident of this state who owns a life insurance policy, or the original certificate holder under a group policy, insuring the life of a person with a catastrophic or life threatening illness or condition, who enters into, or is considering entering into an agreement under which the viatical settlement provider will pay compensation or anything of value, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the viator’s assignment, transfer, sale, devise, or bequest of the death benefit or ownership of the insurance policy or certificate to the viatical settlement provider.

~~NOTE: Authority and Reference cited: Sections 790.10 and 10113.2(f), Insurance Code.~~
Authority cited: Sections 790.10, 10113.1 and 10113.2, Insurance Code; Reference cited: Sections 10113.1 and 10113.2, Insurance Code.

Section 2548.3 Transfers to Unlicensed Persons

A licensee or applicant shall not directly or indirectly assign, transfer, sell, resell, or transfer by gift or bequest, or otherwise convey any life insurance policy that is or has been the subject of a viatical settlement ~~agreement~~, to any person that does not hold a California license as a viatical settlement provider issued by the Commissioner and without obtaining the written consent of the viator. The requirements of this rule are in addition to any other requirements provided by the Corporate Securities Law of 1968. Nothing herein shall be construed as preventing the assignment of a beneficial interest in any life insurance policy that is or has been the subject of a viatical settlement.

~~NOTE: Authority and Reference cited: Sections 790.10 and 10113.2(f), Insurance Code.~~
Authority cited: Sections 790.10, 10113.1 and 10113.2, Insurance Code; Reference cited: Sections 10113.1 and 10113.2, Insurance Code.

Section 2548.4 ~~Viator~~ Designation of Third Party Contacts; Contacts with the Insured

~~The viator may designate a third party to receive and respond to all inquiries by the viatical settlement provider regarding the viator’s health after the viatical settlement agreement is executed. Contacts with the viator for the purpose of determining the health status of the viator by the viatical settlement licensee shall be limited to once every three (3) months for viators with life expectancy of more than (1) one year, and to no more than (1) one month for viators with a life expectancy of (1) one year or less. The viatical settlement provider and broker shall explain the procedure for these contacts to the viator at the time the viatical settlement contract is entered into. The limitations set forth in this section shall not apply to any contacts with a viator under a viaticated policy for reasons other than determining the viator’s health status.~~

A person insured under a life insurance policy or certificate of insurance which is the subject of a viatical settlement as defined under these regulations may designate a third party to receive and respond to all inquiries by a viatical settlement provider regarding the health status of that insured person. Contact with the insured person or his or her designee for the purpose of determining the health status of that insured person by viatical settlement provider shall be limited to once every three (3) months if the insured person has a life expectancy of more than one (1) year, and to no more than once per month if the insured person has a life expectancy of one year or less. The viatical settlement provider shall explain, in a written instrument delivered to the insured, the procedure for these contacts prior to the time the viator enters into the corresponding viatical settlement agreement. The limitations set forth in this section shall not apply to any contacts with an ~~viator~~ insured under a viaticated policy for reasons other than determining the ~~viator's~~ insured's health status.

NOTE: ~~Authority and Reference cited: Sections 790.10 and 10113.2(f), Insurance Code.~~
Authority cited: Sections 10113.1 and 10113.2, Insurance Code; Reference cited: Sections 10113.1 and 10113.2, Insurance Code.

Section 2548.5 Disclosures

At the time an offer is made to the viator, the viatical settlement provider or the viatical settlement broker shall disclose in writing to the viator:

(1) the affiliation, if any, between ~~the viatical settlement provider and broker and the issuer of an insurance policy to be viaticated;~~ the insurer providing coverage under the subject life insurance policy and the viatical settlement broker, and/or viatical settlement provider;

(2) the affiliation, if any, between the viatical settlement provider and the viatical settlement broker;

(3) the amount of commission or other consideration to be paid by the viatical settlement provider to the viatical settlement broker;

(4) the ~~viator's~~ insured's right to designate a third party to receive and respond to all inquiries by the viatical settlement provider regarding the viator's health after the viatical settlement agreement is executed;

(5) the method ~~of contacting the viator or designee and the number of times per month the viator or designee will be contacted regarding the viator's health, after the viatical settlement agreement is executed;~~ and the frequency of contact with the insured or a designee of the insured for the purpose of determining the health status of the insured, after the viatical settlement is entered;

(6) ~~all estimates of the viator's life expectancy, as provided by the physician(s) retained by any viatical settlement provider offering to purchase a policy;~~ of the life expectancy of the insured which are obtained by a licensee in connection with the viatical settlement, unless such disclosure would violate any California or federal privacy laws;

(7) the following notice, in 12-point bold print: NOTICE: YOU MAY HAVE ALTERNATIVES TO SELLING YOUR LIFE INSURANCE POLICY SUCH AS ACCELERATED BENEFITS, CASHING OUT YOUR POLICY, OR USING YOUR POLICY AS COLLATERAL FOR A LOAN. CONTACT YOUR INSURANCE COMPANY FOR FURTHER INFORMATION AND CAREFULLY REVIEW ALL OF YOUR OPTIONS; and

(8) notice that a policy may be resold only to an entity or person who holds a viatical settlement license from the Commissioner, and only with the written permission of the insured.

If a viatical settlement broker satisfies these disclosure requirements, then a viatical settlement provider shall be deemed to have satisfied this section so long as the viatical settlement provider maintains on file a copy of these written disclosures.

NOTE: ~~Authority and Reference cited: Sections 790.10 and 10113.2(f), Insurance Code.~~
Authority cited: Sections 790.10, 10113.1 and 10113.2, Insurance Code; Reference cited: Sections 10113.1 and 10113.2, Insurance Code.

Section 2548.6 Escrow Account

Within 15 calendar days of the viatical settlement provider's receipt of documents to effect the transfer of a legal or beneficial interest in the life insurance policy, which is the subject of the viatical settlement agreement, the viatical settlement provider shall ~~pay the proceeds of the viatical settlement to an~~ deposit the proceeds payable to the viator under the viatical settlement into an escrow or trust account in a state or federally chartered financial institution whose deposits are insured by the Federal Deposit Insurance Corporation (FDIC). The account shall be managed by a trustee or escrow agent independent of the parties to the viatical settlement contract. ~~The attorney for a~~ An attorney or law firm representing the viatical settlement provider shall not be the escrow agent for the viatical settlement provider. The trustee or escrow agent shall transfer the proceeds to the viator within ~~15 calendar~~ 3 business days of following the viatical settlement provider's receipt of acknowledgment of the transfer of ownership of or beneficial rights to the insurance policy.

NOTE: ~~Authority and Reference cited: Sections 790.10 and 10113.2(f), Insurance Code.~~
Authority cited: Sections 10113.1 and 10113.2, Insurance Code; Reference cited: Sections 10113.1 and 10113.2, Insurance Code.

Section 2548.7 General Rules

Viatical settlement licensees shall not:

(a) pay or offer to pay any finder's fee, commission, or other compensation to any person ~~unlicensed under Section 10113.2 of the Insurance Code;~~ who is required to be a licensee under Section 10113.2 of the Insurance Code, but who is not duly licensed;

(b) enter into any viatical settlement in which payments to the viator are to be made in installments;

(c) engage in any acts determined by the eCommissioner to be unfair, deceptive or harassing;

(d) deduct the viatical settlement broker's fee or other valuable consideration from the amount paid or quoted to the viator ~~on a policy;~~

(e) act in the capacity of both a viatical settlement broker and a viatical settlement provider unless authorized in advance and in writing by the Commissioner;

(f) act as a viatical settlement broker ~~after having acted as an insurance agent or broker with respect to the same individual policy;~~ after having acted as an insurance agent or broker with respect to the same life insurance policy or certificate of insurance coverage unless written disclosure of this potential conflict of interest is provided by the viatical settlement broker to the viator;

(g) destroy any material records such as purchase agreements, assignments, powers of attorney, escrow agreements, changes of beneficiary, medical records releases, other releases, disclosures, and other material documents, pertaining to a viatical settlement for (5) five years after the date of execution of the viatical settlement;

(h) act as a viatical settlement provider, viatical settlement broker or sales agent ~~viatical settlement investment broker~~ in with respect to a viatical settlement involving a life insurance policy within its contestable or suicide period;

(i) act in ways contrary to the best interests of the viator, or fail to act according to the viator's instructions, while acting as a viatical settlement broker;

(j) offer to buy a policy for an amount less than the policy's cash surrender value or accelerated benefits value;

(k) use forms that have not been approved in advance by the Commissioner; and

(l) sell any ownership interest in a viatical settlement business that holds a California viatical settlement license to any entity or person who does not hold a California viatical settlement license, and without authorization from the Commissioner.

NOTE: ~~Authority and Reference cited: Sections 790.10 and 10113.2(f), Insurance Code.~~
Authority cited: Sections 790.10, 10113.1 and 10113.2, Insurance Code; Reference cited:
Sections 10113.1 and 10113.2, Insurance Code.

Section 2548.8 Revocation of License; Denial of Application

The Commissioner shall have the right to suspend or revoke a license of any viatical settlement provider, viatical settlement broker, or viatical settlement investment broker, ~~or sales agent,~~ or deny a viatical settlement license application if the Commissioner finds that:

- (a) the licensee or applicant has knowingly or willingly made any material misrepresentation in the application for a license;
- (b) the licensee or applicant has been convicted of a felony or misdemeanor under the laws of the United States or any state therein, or a public offense having as one of its necessary elements a fraudulent act, or an act of dishonesty in acceptance, custody or payment of money or property;
- (c) the licensee or applicant has violated any provisions of Title 10 of the California Code of Regulations, or the California Insurance Code, including but not limited to has failed to remit on a timely basis license renewal fees or has failed to file an annual statement;
- (d) the licensee or applicant has shown incompetency or untrustworthiness in the conduct of any business, or has by commission of a wrongful act or practice in the course of any business exposed the public or those dealing with him to the danger of loss;
- (e) the licensee no longer meets the qualification for a license to transact viatical settlement business;
- (f) the licensee or applicant does business with an unlicensed company or individual; where licensing for the capacity in which the company or individual acts is required;
- (g) the viatical settlement provider or applicant has failed to honor contractual obligations set out in a viatical settlement contract;
- (h) the viatical settlement provider has failed to ~~set up~~ establish and maintain an escrow account pursuant to Section 2548.6 of these regulations;
- (i) the licensee or applicant has been refused a professional, occupational, or vocational license, or had such license suspended or revoked by any licensing authority for the reasons that should preclude the granting of the license applied for;
- (j) the licensee or applicant has previously engaged in a fraudulent practice or act

or has conducted any business in a dishonest manner;

(k) the licensee or applicant has knowingly misrepresented the terms or effect of a viatical settlement contract or viatical investment;

(l) the licensee or applicant has aided or abetted any person in the act or omission which would constitute grounds for the suspension, revocation or refusal of a license issued under this code to the person aided or abetted;

(m) the licensee or applicant has permitted anyone ~~in his or her employ~~ who is an employee of the licensee or applicant to violate Title 10 of the California Code of Regulations or the California Insurance Code.

NOTE: ~~Authority and Reference cited: Sections 790.10 and 10113.2(f), Insurance Code.~~
Authority cited: Sections 790.10, 10113.1 and 10113.2, Insurance Code; Reference cited: Sections 10113.1 and 10113.2, Insurance Code.